

Amendment No. 5 to HB1781

**Arriola
Signature of Sponsor**

AMEND Senate Bill No. 349*

House Bill No. 1781

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by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION __. Tennessee Code Annotated, Section 67-4-2003, is amended by adding the following language as new subsections (d) and (e):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group by completing and filing a registration form prescribed by the department and by providing on such form the name and federal identification number under which the group will be filing its excise tax return, the name and federal identification number of each corporation that will be included in the filing group, and such other information as the commissioner may require. The registration form shall be filed with the department no later than August 31, 2001, or within fifteen (15) days after the date the affiliated group becomes subject to the tax, whichever date occurs last. An affiliated group shall be required to register even though some or all of the corporations included in its filing group have registered or filed an excise tax return under prior law. In the event corporate members of an affiliated group cease to be a part of the filing group or in the event new corporate members join the filing group, within thirty (30) days thereafter, the affiliated group shall file an amended registration form providing such information as the commissioner may require.

(e) The commissioner shall assess a penalty of \$100 for each failure to timely register in accordance with the provisions of this section.

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SECTION _____. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new subsection:

() "Affiliated group" means any group of corporations that have elected to file a consolidated federal income tax return under the provisions of Sections 1501 through 1505 of the Internal Revenue Code; provided however, that for purposes of Parts 20 and 21 of this chapter, neither a financial institution, a hospital or hospital company, nor an insurance company shall be a member of an affiliated group. For tax years ending on or after December 31, 2001, affiliated groups shall file consolidated franchise and excise tax returns to the extent of their United States operations. Such consolidated franchise and excise tax returns shall include all corporations that are filing on a consolidated basis for federal income tax purposes if one or more such corporations would be subject to Tennessee franchise and excise taxes if it were filing on a separate entity basis.

SECTION _____. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following sentence at the end of subsection (16):

In the case of persons or taxpayers required to file franchise and excise tax returns on a combined or consolidated basis, the combined or consolidated group shall be considered a single person or taxpayer.

SECTION _____. Tennessee Code Annotated, Section 67-4-2006(a)(1), is amended by deleting the words "and except for a unitary business as is defined in § 67-

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4-2004(25)” and substituting instead “and except for a unitary business or an affiliated group”.

SECTION _____. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following new subdivision (4) immediately after subdivision (3) and renumbering the remaining subdivisions accordingly:

(4) For an affiliated group of corporations, “net earnings” for Tennessee excise tax purposes is defined as the federal consolidated taxable income or loss of the affiliated group before the net operating deduction and special deductions provided for in Sections 241-247 and 249 in the Internal Revenue Code, and as adjusted by subsections (b) and (c) of this section on a consolidated basis.

SECTION _____. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the first sentence of subdivision (2) in its entirety and substituting instead the following:

Except for taxpayers required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single business entity; therefore, in the case of mergers, consolidations and like transactions, no loss carryovers incurred by the predecessor taxpayer shall be allowed as a deduction from net earnings on the excise tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated, or single entity basis, be permitted to take a loss carryover that it, or an entity included in its filing group, generated during a tax year in which such entity was

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not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2006(c), is amended by deleting the language in subdivision (4) in its entirety and substituting instead the following language:

(4) Taxpayers required to file excise tax returns on a combined or consolidated basis may take any qualified Tennessee loss carryover that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such loss carryover has not previously been taken by the member itself before it joined the group or by another group at the time the group member generating the loss was a member of that group; and provided that the loss carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer, filing its excise tax return on a combined or consolidated basis, be permitted to take a loss carryover that an entity included in its filing group generated during a tax year in which such entity was not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2007, is amended by deleting the language in subsection (e) in its entirety and substituting instead the following new language:

(e) Except for taxpayers required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and single

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business entity for Tennessee excise tax purposes and shall file its excise tax return on a separate entity basis reflecting only its own activities.

SECTION _____. Tennessee Code Annotated, Section 67-4-2009(7), is amended by deleting the first sentence of subdivision (A) in its entirety and substituting instead the following sentence:

Except for unitary groups of financial institutions and business entities that have been required to file excise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer, whether filing its excise tax return on a combined, consolidated or single entity basis, be permitted to take a credit carryover that it, or an entity included in its filing group, generated during a tax year in which such entity was not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2009(7), is amended by deleting the language in subdivision (C) in its entirety and substituting instead the following language:

(C) Taxpayers that have been required or permitted to file excise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the

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group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group, or by another group at the time the group member generating the credit was a member of that group; and provided that the credit carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer, filing its excise tax return on a combined or consolidated basis, be permitted to take a credit carryover that an entity included in its filing group generated during a tax year in which such entity was not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2012, is amended by adding the following sentence at the end of subsection (a):

Persons required or permitted to file excise tax returns on a consolidated basis shall compute their excise tax apportionment formula on a consolidated basis.

SECTION _____. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence of subsection (b):

Persons required or permitted to file franchise and excise tax returns on a combined or consolidated basis shall make their quarterly estimated franchise and excise tax payments on a combined or consolidated basis, as the case may be, the combined or consolidated group being the taxpayer.

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SECTION _____. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following new subsections immediately after subsection (f) and by re-lettering the remaining subsections accordingly:

() Notwithstanding any other law to the contrary, an affiliated group that files a consolidated franchise and excise tax return for a tax period ended on or after December 31, 2001, but before December 31, 2002, shall not be penalized if each of its quarterly estimated payments equal twenty-five percent (25%) of seventy percent (70%) of its final tax liability for the tax year.

() Notwithstanding any other law to the contrary, an affiliated group that files a consolidated franchise and excise tax return for a tax period ended on or after December 31, 2001, but before March 31, 2002, and has quarterly estimated payments due before July 1, 2001, and after having timely made such payments finds, because of changes made in the law after the payments were made, that one or more such payments may fall below twenty-five percent (25%) of seventy percent (70%) of the final franchise and excise tax liability for the tax year, may avoid being penalized if any shortage is made up by the due date of the next quarterly payment falling due after July 1, 2001.

SECTION _____. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence of subsection (g):

Persons required or permitted to file franchise and excise tax returns on a combined or consolidated basis shall make their franchise and excise tax extension requests and compute the payments thereon on a combined or

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consolidated basis, as the case may be, the combined or consolidated group being the taxpayer.

SECTION _____. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following language as a new subsection:

() Notwithstanding any other law to the contrary, for tax years beginning on or after January 1, 2001, but before July 1, 2001, the commissioner of revenue is authorized waive, in whole or in part, any statutory penalty assessed for the delinquent filing or deficient payment of any quarterly estimated franchise and excise tax payment due for such tax year, if in the judgment of the commissioner or the commissioner's delegate the taxpayer has acted reasonably and has made a good faith effort to comply with the statutory provisions of this section.

SECTION _____. Tennessee Code Annotated, Section 67-4-2103, is amended by adding the following language as new subsections (d) and (e):

(d) An affiliated group subject to the tax levied by this part shall register with the department of revenue as an affiliated group by completing and filing a registration form prescribed by the department and by providing on such form the name and federal identification number under which the group will be filing its franchise tax return, the name and federal identification number of each corporation that will be included in the filing group, and such other information as the commissioner may require. The registration form shall be filed with the department no later than August 31, 2001, or within fifteen (15) days after the

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date the affiliated group becomes subject to the tax, whichever date occurs last.

An affiliated group shall be required to register even though some or all of the corporations included in its filing group have registered or filed a franchise tax return under prior law. In the event corporate members of an affiliated group cease to be a part of the filing group or in the event new corporate members join the filing group, within thirty (30) days thereafter, the affiliated group shall file an amended registration form providing such information as the commissioner may require.

(e) The commissioner shall assess a penalty of \$100 for each failure to timely register in accordance with the provisions of this section.

SECTION _____. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following sentence at the end of subsection (b):

For persons required to file franchise tax returns on a consolidated basis, net worth is defined as the difference between the total assets and total liabilities of the entire filing group, as shown on the books and records of the group kept in accordance with generally accepted accounting principles.

SECTION _____. Tennessee Code Annotated, Section 67-4-2106, is amended by deleting the language in the last sentence of subsection (c) in its entirety and substituting instead the following new language:

Except for taxpayers required or permitted to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate and

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single business entity for Tennessee franchise tax purposes and shall file its franchise tax return on a separate entity basis reflecting only its own activities.

SECTION _____. Tennessee Code Annotated, Section 67-4-2107, is amended by deleting subsection (b) in its entirety and relettering the remaining subsection accordingly.

SECTION _____. Tennessee Code Annotated, Section 67-4-2108(a), is amended by adding the following sentence immediately after the first sentence of subdivision (3):

For persons required to file franchise tax returns on a consolidated basis, “property” for purposes of this section shall be the property owned or used by the entire filing group, valued at cost less accumulated depreciation computed in accordance with generally accepted accounting principles.

SECTION _____. Tennessee Code Annotated, Section 67-4-2109(e), is amended by deleting the first sentence of subdivision (1) in its entirety and substituting instead the following sentence:

Except for unitary groups of financial institutions and taxpayers required to file franchise tax returns on a combined or consolidated basis, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. Except as otherwise provided in Section 67-4-2018, in no case shall any taxpayer, whether filing its franchise tax return on a combined, consolidated or single entity basis, be permitted to take a credit carryover that it, or an entity included in its filing

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group, generated during a tax year in which such entity was not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2109(e), is amended by deleting the language in subdivision (3) in its entirety and substituting instead the following language:

(3) Taxpayers required to file franchise tax returns on a combined or consolidated basis may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group, or by another group at the time the group member generating the credit was a member of that group; and provided that the credit carryover shall be subject to the limitations set forth in this subsection. In no case shall any taxpayer, filing its franchise tax return on a combined or consolidated basis, be permitted to take a credit carryover that an entity included in its filing group generated during a tax year in which such entity was not subject to Tennessee franchise and excise taxes and did not file a franchise and excise tax return.

SECTION _____. Tennessee Code Annotated, Section 67-4-2111, is amended by adding the following sentence at the end of subsection (a):

Persons required to file franchise tax returns on a consolidated basis shall compute their franchise tax apportionment formula on a consolidated basis.

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SECTION ____ Tennessee Code Annotated, Section 67-4-2108(a)(6), is
amended by adding the following language at the end of subdivision (B):

“provided however, in the case of an affiliated group ‘exempt inventory’
means that portion of the taxpayer’s finished goods inventory in excess of fifty
million dollars (\$50,000,000);”